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DEPARTMENT OF STATE
THE LEGAL ADVISER

16424

September 21, 1967

TO : U - The Under Secretary

THROUGH: S/S Bolk

FROM : L - Carl F. Salans CFS

SUBJECT: "The Liberty" - Discrepancies Between Israeli Inquiry and U.S. Navy Inquiry - INFORMATION MEMORANDUM

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REVIEWED BY John Kelley DATE 1/24/83
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As you requested, we have compared the decision of the Israeli Judge, dated July 21, 1967, with the findings of the U.S. Navy Court of Inquiry, and the Clifford Report, concerning the Liberty incident.

The following discrepancies are noteworthy:

I. Speed and Direction of the "Liberty"

- The Israeli report indicates that the torpedo boat Division Commander reported and reconfirmed the vessel's (Liberty's) speed at 28 to 30 knots and that it had changed its navigational direction shortly after 1341 hours.

- The U.S. Navy Inquiry established that the Liberty had been on a steady course at 5 knots from 1132 hours until the attack.

II. Aircraft Surveillance

- The Israeli report indicates that a ship was reported in the area by reconnaissance aircraft at 0600 and that another report was received of a contact between an Israeli aircraft and a surface vessel about 0800.

- The Navy Court finding of facts, plus testimony of various members of the crew indicate reconnaissance aircraft flights of the Liberty at 0515, 0830, 1030, 1050, 1200, 1240, 1250, and 1345.

III. Identification by Israeli Aircraft

- The Israeli report indicates that the fighter aircraft carried out a run over the ship in an effort to identify it.

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- The Navy inquiry reported no such identification run. Commander McGonagle testified that he observed one aircraft of similar characteristics to those on earlier reconnaissance flights approximately five to six miles from the ship at an altitude of 7,000 feet. He did not see it approach the ship. Within a couple of minutes, a loud explosion was heard from the port side of the ship, apparently resulting from a rocket launched by a second aircraft.

IV. Identification by Torpedo Boats

- The Israeli report indicates that the torpedo boats approached the Liberty in order to establish visual contact and to identify it, and that in addition, the Commander of the torpedo boats signalled the Liberty requesting its identification. The Liberty reportedly answered, "Identify yourself first," and opened fire on the torpedo boats.

- Commander McGonagle's testimony indicated that the only signals from the torpedo boats were those made during the high-speed approach from a distance of approximately 2,000 yards and that it was not possible for the Liberty to read the signals because of the intermittent blotting of view by smoke and flames. No reply signal was sent. Immediately after the Liberty was struck by a torpedo, the torpedo boats stopped at a range of approximately 500 to 600 yards and one signalled by flashing light in English "Do you require assistance?" Commander McGonagle testified that he had no means to communicate with the boat by light but hoisted "CODE LIMA INDIA". ("I am not under command", i.e., not able to control movements of ship.)

V. Flag and Identification Markings

- The Israeli report indicates that the fighter aircraft which reportedly made an initial pass over the Liberty was looking for a flag but found none; likewise no other identification mark was observed. "... Throughout the contact no American or any other flag appeared on the ship...." (Elsewhere the report had indicated that at 1055 the ship had been identified as the Liberty "whose marking was GBR-5.")

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- The Navy inquiry confirms by testimony of five members of the crew that they had personally observed the Ensign flying during the entire morning and up until the air attack. The Ensign was subsequently shot away during the air attack. Before the torpedo attack, a second Ensign was hoisted. The Navy report also found that "hull markings were clear and freshly painted."

- The Clifford report noted that "the Liberty's U.S. Navy's distinguishing letters and number were painted clearly on her bow. The Liberty's name was clearly painted in English on her stern. The ship's configuration and her standard markings were clearly sufficient for reconnaissance aircraft and waterborne vessels to identify her correctly...." The report noted that at all times prior to the air attack the Liberty was flying her normal size American flag (5 ft. by 8 ft.) at the masthead. Five minutes prior to the attack by the torpedo boats, the Liberty put up a flag measuring 7 ft. by 13 ft. to replace the flag which had been shot down in the air attack.

VI. Identification of Ship as "El-Kasir"

- The Israeli report indicates that shortly before the torpedo boat attack the torpedo boat Division Commander reported the certain identification of the vessel as an Egyptian transport ship named "El Kasir". Identification of the target was made both by the Division Commander and the commander of another torpedo boat. The Israeli Judge indicated in his decision that "on examining photographs of the two ships, I am satisfied that a likeness exists between them, and that an error of identification is possible, especially having regard to the fact, that identification was made while the ship was clouded in smoke."

- The Clifford report noted "That the Liberty could have been mistaken for the Egyptian supply ship El Quseir is unbelievable. El Quseir has one-fourth the displacement of the Liberty, roughly one-half the beam, is 180 feet shorter, and is very differently configured. The Liberty's unusual antenna array and hull markings should have been visible to low-flying aircraft and torpedo boats. ... Trained Israeli naval personnel should have been able easily to see and identify the larger hull markings on the Liberty."

## Additional Observations Regarding Forces Used

- The Israeli report states that the initial speed of the target reported by the torpedo boat commander at 1300 hours at 30 knots was verified within minutes as a speed of 28 knots. The report makes no mention of the speed of the target which led to the final contact report. Thus there was no reason for surmising that the ships could possibly be the Liberty.

- The reported speed would have ruled out the [illegible] as the target, as well as the Liberty since the [illegible] of the "Kasir", published in Jane's Fighting Ships, [illegible] range of 14 knots. The Liberty's top speed is [illegible]

## II. Failure to Relate "Liberty" to Bombardment Capability

- The Israeli report emphasizes that the attack was launched with reports that the El Arish area was being shelled from the sea. The implication of such reports was obviously that a ship capable of such shelling was present in the immediate offshore area, i.e., within gun range of the shore.

- It would be clear to any trained observer that the armament aboard the Liberty was incapable of shore bombardment. It appears nevertheless that neither the aircraft, the torpedo boats, nor the command headquarters to which they [illegible] reported evaluated the ship's capability for shore bombardment.

## III. Time Sequence of Attacks

- The Israeli report indicates that it had been agreed that as soon as the torpedo boats located the target, aircraft would be dispatched. At 1341 hours the torpedo boat located the target. "A few minutes later", the dispatch of aircraft was requested. The first air attack occurred at approximately 1400 hours.

- Assuming "a few minutes later" would mean four or five minutes, the request for aircraft must have occurred about 1345. One may infer from the fact that within a period of approximately 15 minutes, the request was transmitted, received, a command decision made, aircraft dispatched, and the attack launched, that no significant time was expended in an effort to identify the ship from the air before the attack was launched.

## IV. Attack By Torpedo Boat After "Do Not Attack" Order

- The Israeli report confirms that during the final attack

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by aircraft the marking "CPR-5" was noted on the hull and an order was transmitted to the torpedo boat division not to attack. The order was recorded in the log book of the flag boat at approximately 1420 hours. The torpedo boats nevertheless began their attack run at approximately 1423. The Division Commander later "claimed that no such message ever reached him." The Deputy Commander testified that "he received the message and passed it on to the Division Commander."

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